

DOCKET NO. FBT-CV21-6109320-S : SUPERIOR COURT
OLD MINE ASSOCIATES, LLC : J. D. OF FAIRFIELD
V. : AT BRIDGEPORT
INLAND WETLANDS AND WATERCOURSES :
COMMISSION OF THE TOWN OF TRUMBULL, ET AL: MAY 5, 2022

MEMORANDUM OF DECISION

FACTS

The Defendant, 48 Monroe Turnpike, LLC, is the owner of a 17.6-acre parcel located on the easterly side of Route 111, near Old Mine Road, in the Town of Trumbull. The property contains a vacant 253,000 square foot building, and a free-standing parking garage. Prior to 2015, the complex at 48 Monroe Turnpike served as the regional headquarters of United Health Care.

The Plaintiff, Old Mine Associates, LLC, owns property which abuts 48 Monroe Turnpike. A Home Depot is operated on the property.

48 Monroe Turnpike, LLC is attempting to develop its property into a senior living and adult care community. In pursuit of that objective, it filed an application with the Trumbull Inland Wetlands and Watercourses Commission concerning 48 Monroe Turnpike on May 26, 2021 (ROR 1).

The application sought approval for “modernization and enhancement of a degraded storm water management basin and the renovation and modification of paved access drives, within 100 feet of the Pequonnock River and two man made drainage wetlands.” (ROR 1)

Three (3) wetland areas are located on the parcel known as 48 Monroe Turnpike. There are two man made drainage areas, and the Pequonnock River flows alongside the parcel. The

application sought to remediate two (2) detention basins, and to repair the paved access driveways. No new activities within the upland review area were contemplated, (ROR 4; ROR 5), and the activities would have no impact upon the Pequonnock River.

The Application (#21-29) appeared on the June 1, 2021, agenda of the Wetlands Commission, and was again before the Commission on July 6, 2021. (ROR 5; ROR 7)

At the July 6 meeting, the Trumbull Wetlands commission heard from a representative of the applicant, 48 Monroe Turnpike, LLC. (ROR 7) The Commission voted to approve the request to conduct a regulated activity, subject to general conditions. No public hearing was ever noticed.

On July 8, a letter was sent (ROR 15) acknowledging the Commission's approval of the permit. Notice of the approval was published in The Trumbull Times, a newspaper of general circulation in the community, on July 15, 2021. (ROR 16), as required by Section 22a-24a(d) (1) of the General Statutes. The notice clearly indicated that the decision was made without a public hearing.

The Plaintiff, Old Mine Associates, LLC, brings this appeal via a writ, summons and complaint dated August 18, 2021. Service of process was made upon both the Trumbull Inland Wetlands and Watercourses Commission and 48 Monroe Turnpike, LLC, on August 18, 2021.

The Defendant, 48 Monroe Turnpike, LLC, and the Trumbull Wetlands Commission have moved to dismiss this appeal, claiming lack of subject matter jurisdiction. They claim that the court lacks jurisdiction, due to the failure of Old Mine Associates, LLC, to prosecute an appeal within fifteen (15) days of publication, pursuant to Section 22a-43 of the General Statutes. The statute reads:

“... any person owning or occupying land which abuts any portion of the land within, or is within a radius of ninety feet of the wetland or watercourse involved in any regulation, order, decision or action ... may within the time specified in subsection (b) of section 8-8, from the publication of such regulation, order decision or action... appeal to the superior court for the judicial district where the land affected is located...”

A failure to adhere to the service requirement of section 8-8, implicates a court’s subject matter jurisdiction over an appeal. *Fedus v. Planning & Zoning Commission*, 278 Conn. 751, 776 n, 21 (2006). The failure to make timely service deprives the court of subject matter jurisdiction. *Vitale v. Zoning Board of Appeals*, 279 Conn. 672, 680 (2006); *Bridgeport Bowl-O-Rama, Inc. v. Zoning Board of Appeals*, 195 Conn. 276, 280-81 (1985).

SERVICE OF PROCESS WAS NOT TIMELY

All parties acknowledge, that no appeal to the court was filed within fifteen (15) days of July 15, 2021, the date on which notice of the Wetlands Commission’s decision was published in The Trumbull Times.

However, the Plaintiff argues that the time within which to bring an appeal was extended, pursuant to the provisions of Section 8-8 (r) of the General Statutes. It reads:

“In any case in which a board fails to comply with a requirement of a general or special law, ordinance or regulation governing the content, giving, mailing, publishing, filing or recording of any notice either of a hearing or of an act taken by the board, any appeal or action by an aggrieved person to set aside the decision or action taken by the board on the grounds of such noncompliance shall be taken not more than one year after the date of the decision or action.”

Section 22a-42a (c) (1) of the General Statutes governs situations in which a municipal wetlands authority is required to hold a public hearing on an application before it. The statute does not require a public hearing on every application filed by an applicant seeking to conduct a regulated activity over which the commission has jurisdiction. It provides:

“... The inland wetlands agency shall not hold a public hearing on such application unless the inland wetlands agency determines that the proposed activity may have a significant impact on wetlands or watercourses, a petition signed by twenty-five persons who are eighteen years of age or older and reside in the municipality in which the regulated activity is proposed, requesting a hearing is filed with the agency not later than fourteen days after the date of receipt of such application, or the agency finds that a public hearing regarding such application would be in the public interest... Such hearing shall be held in accordance with the provisions of section 8-7d...”

If a hearing is held for any of the reasons enumerated in Section 2a-42a (c) (1), Section 8-7 of the General Statutes controls, concerning notice requirements. The statute reads:

“Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen or less than ten days and the last not less than two days before the date set for the hearing. In addition to such notice, such commission, board or agency may by regulation provide for additional notice. Such regulations shall include provisions that the notice be mailed to persons who own land that is adjacent to the land that is the subject of the hearing, or be provided by posting a sign on the land that is the subject of the hearing, or both... “

Trumbull has, pursuant to the authorization provided in General Statutes Section 22a-42a (c) (1), adopted a notice provision, Section 7.12 of the Trumbull Inland Wetlands and Watercourses Regulations of the Town of Trumbull. The local regulation reads:

“Notification of abutting property owners – Each applicant of the Wetlands Agency shall be required to notify all property owners within 75 feet of any property lines of the pending application. It shall be the responsibility of the applicant to prepare the list of said abutting property owners from the records of the Assessor’s Office as shown on the last completed Grand List by determining the names and addresses of said property owners as measured on the most recently completed Assessor’s Maps as are on file in the Assessor’s Office. Such property owners shall be notified by the applicant by First Class Mail of the time and place of the Public Hearing at which such application shall be heard. Such notice letters shall be postmarked not less than fifteen (15) days prior to the scheduled date for said hearing. It shall be the applicant’s responsibility to file with the clerk of the Commission, prior to the close of the Public Hearing, a Certificate of Mailing, provided by the Post Office, listing all of the property owners to whom notice has been sent.”

In this case, the Trumbull Inland Wetlands and Watercourses Commission did not determine that any proposed activity within the upland review area would have a significant impact on wetlands or watercourses. It did not determine that a public hearing would be in the public interest, and a petition requesting a public hearing was not submitted to the Wetlands Commission.

The Plaintiff acknowledges that the application was properly noticed on the Commission's agenda, and that publication in The Trumbull Times occurred following the approval of the permit.

Service of process was not made until August 18, 2021, well beyond the time provided by statute for the taking of an appeal to court.

The Plaintiff maintains, however, that it was not required to bring its appeal within fifteen (15) days following publication, because the applicant, 48 Monroe Turnpike, LLC, did not comply with Section 7.12 of the Trumbull Regulations. This claimed failure to comply with the municipal notice requirements, it argues, extends the time for the taking of an appeal, pursuant to General Statutes Section 8-8 (r).

The Plaintiff bases this argument on the fact that no notice was sent to abutting property owners by 48 Monroe Turnpike, LLC, at the time the application was filed with the Wetlands Commission.

This claim, although creative and ingenious, is not persuasive.

No provision of the General Statutes requires a municipal wetlands authority to provide notice, actual or constructive, of its intent to issue a wetland permit without conducting a public

hearing. *Rockville Fish and Game Club, Inc. v. Inland Wetlands Commission*, 231 Conn. 451, 461 (1994).

Section 9 of the Trumbull Regulations, which tracks the language of Sections 22a-42a (c) (1) and 8-7d of the General Statutes, contains no provision mandating additional notification by an applicant, in the absence of a public hearing. By its express terms, Section 7.12 requires that written notice must be provided “not less than fifteen (15) days prior to the scheduled date for said hearing.”

Since no public hearing was ever scheduled by the Trumbull Inland Wetlands and Watercourses Commission concerning its application, no notification was sent to abutting property owners by 48 Monroe Turnpike, LLC.

The Plaintiff insists that the first sentence of Section 7.12 requires notification to abutting owners at the time any application is filed, and that the Regulation does not apply only to those applications which are subject to a public hearing. The sentence reads: “Each applicant of the Wetlands Agency shall be required to notify all property owners within 75 feet of any property lines of the pending application.”

By reading the first sentence in isolation, the Plaintiff argues that written notification is required at the time any application is filed. This argument, although creative and ingenious, is not well taken, in that clarifying language in the balance of the Regulation, requires that notification occur fifteen (15) days before the scheduled public hearing.

Examining Section 7.12 in its entirety, reveals a Regulation which is designed to mandate written notification if, for any reason, a public hearing is scheduled by the

Commission. The Trumbull Wetlands Commission has consistently interpreted the Regulation to require only a single notification, and only when a public hearing is planned.

Although there is nothing to prevent a municipal wetlands authority from requiring notification which is more stringent than that required by state law, Section 7.12, when read in context, can not be construed to require written notification in the absence of a public hearing.

Municipal land use regulations are legislative enactments and are governed by the same principles which apply to the construction of statutes. *Campion v. Board of Aldermen*, 278 Conn. 500, 510 (2006). A regulation must be interpreted in accordance with the principle that a reasonable and rational result is intended. *Wood v. Zoning Board of Appeals*, 258 Conn. 691, 699 (2001). Although the construction of a municipal regulation is a question of law for the court, and is entitled to plenary review; *Doyen v. Zoning Board of Appeals*, 67 Conn. App. 597, 611 (2002); a court, faced with two equally plausible interpretations of language, may properly give deference to the construction of the language adopted by the agency. *Trumbull Falls, LLC v. Planning & Zoning Commission*, 97 Conn. App. 17, 23 (2006).

The Plaintiff's invitation to write into the Trumbull Regulation, Section 7.12, a requirement for two (2) personal notifications where the Commission has failed to do so explicitly, must be declined. Furthermore, where notification of the Commission's action has been published in a newspaper having a general circulation within the community, as required by law, any aggrieved party has constructive notice of its right to appeal from the granting of a permit to conduct a regulated activity.

The Plaintiff's attempt to transform evidence provided to the Commission by the applicant's attorney during a meeting into a de facto public hearing, is also unavailing. There

is no statutory prohibition concerning the receipt of material from an applicant to be used in determining whether a proposed activity will have a significant impact on wetlands or watercourses.

Nor is Old Mine Associates, LLC assisted by Section 10.1e of the Trumbull Regulations. That section applies only in those instances where a public hearing was held, after a finding by the Commission that a significant impact on wetlands or watercourses may result, or a hearing is otherwise mandated under the provisions of General Statutes Section 22a-42a (c) (1).

CONCLUSION

The motion to dismiss filed by the Defendant, 48 Monroe Turnpike, LLC, is GRANTED.

Radcliffe, J.T.R.
RADCLIFFE, JTR

Decision entered in accordance with the foregoing.
All counsel notified. ~~Transcript~~ Email to Reporter.
JTR 5/5/22